

REMARKS

Claims 61-68 are pending. Claim 61 has been amended.

Amendment and/or cancellation of claims should in no way be construed as an acquiescence to any of the Examiner's rejections. Amendment and/or cancellation of claims are being made solely to expedite prosecution of the present application and do not, and are not intended to, narrow the claims in anyway. Applicants reserve the option to further prosecute the same or similar claims in the instant or in a subsequent patent application.

Priority

The Office Action states that “[a]pplicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C 119(e).” Applicants respectfully disagree. Applicants believe that both disclosures in the provisional application 60/024,845 (the “845 provisional”) and the instant application that claims priority to this provisional provide full support for pending claims. However, in an effort to expedite prosecution, Applicants will address the outstanding rejections on the merits of each rejection.

Rejection of claims under 35. U.S.C. 112

Claims 61-68 stand rejected under 35 U.S.C. 112, first paragraph. The Examiner asserts that because the specification, while being enabled for an isolated nucleic acid sequence comprising a nucleotide sequence that encodes a polypeptide that reduces crotonyl-CoA or crotonyl-ACP and comprises an amino acid sequence either identical to SEQ ID NO: 2, or differing from SEQ ID NO: 2 by substitution, insertion or deletion of a single amino acid, does not reasonably provide enablement for a nucleotide sequence encoding a polypeptide that reduces crotonyl-CoA or crotonyl-ACP and differs from SEQ ID NO: 2 by insertion, deletion or substitution [of] more than one amino acid. Applicants respectfully traverse this rejection.

Solely in an effort to expedite prosecution, claim 61 was amended. Amendment of the claims is believed to obviate the rejection. No new matter was introduced by the amendment. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Rejection of claims under 35 U.S.C. § 102(e)

Claims 61-68 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kunsch et al. (U.S. Patent No. 6,593,114), which claims priority through U.S.S.N. 08/781,986 filed 1/3/1997. The previous Office Action dated June 25, 2004 stated that Kunsch et al. discloses a polynucleotide comprising SEQ ID NO: 772 and that “[n]ucleotides 24-704 of SEQ ID NO: 772 correspond[] to nucleotides 1-678 of instant SEQ ID NO: 1.” The rejection is respectfully traversed.

Solely in an effort to expedite prosecution, claim 61 was amended. Amendment of the claims is believed to obviate the rejection. No new matter was introduced by the amendment. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Double Patenting

Claims 61-68 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,432,670. Applicants respectfully submit a Terminal Disclaimer in response to this rejection. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the above remarks and the amendments to the claims, it is believed that this application is in condition for allowance. If a telephone conversation with Applicant's Attorney would expedite prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 832-1000.

Respectfully submitted,



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